

1 A Again, we had rentals, demos, loaners that
2 operated across our UHF frequencies and our 800 frequencies.
3 All were house radios that you guys know I have because
4 you've seen them. I also have a number of referring
5 subdealers, several of them, who also operate radios on my
6 systems that I don't charge them for because they are
7 continuously sending me customers.

8 And also, fellows, if you want to be honest on
9 this thing here, why don't you tell the Court that an
10 application was filed, produce the number of mobiles on this
11 channel and a whole slew of my UHF channels from 180 down to
12 90? And for a lot of those channels it was filed within the
13 construction period from the grant date of those licenses.
14 Let's be honest here, fellows. You know it, and I know it.

15 Q Mr. Kay, would it be correct that on the 470.512
16 band in the business radio service 90 is the number of units
17 required to obtain exclusivity on a channel. Correct?

18 A Well, that's an open question. It's something my
19 attorneys are going to be researching because private
20 carriers are handled differently from your typical end-user
21 customer. The Commission recognizes that private carriers,
22 such as myself, who provide service to others, to customers,
23 that customers will come, customers will go; loading counts
24 will go up, loading counts will go down. There is a certain
25 level that a private carrier is allowed to operate at

1 without reducing the number of mobiles.

2 The time periods of this are also not specified in
3 the rules. You know about that rule; so do I. So I am not
4 required to continuously maintain 90 radios on any channel
5 continuously. It's also unreasonable to expect that a
6 private carrier would. Customers will come, customers will
7 go; loading counts go up, they go down. You know it; so do
8 I. That's the way the radio business works when you're
9 providing service to others. It's called "churn."

10 MR. SCHAUBLE: Your Honor --

11 MR. KELLER: I'm also not aware of the rule in
12 Subpart L that specifically talks about the number of --
13 specifically. I'm aware of 90 units being the maximum load,
14 and I'm aware that the rules otherwise refer to exclusivity,
15 but I'm not aware of the rule that says -- spells out what
16 number of units is required to be exclusive.

17 MR. SCHAUBLE: Your Honor, I would just note,
18 90.13 --

19 MR. KELLER: 313.

20 MR. SCHAUBLE: No. I'm talking. I believe the
21 record will reflect --

22 MR. KELLER: I'd be happy to be educated.

23 MR. SCHAUBLE: 90.135(a)(5) of the rule --

24 MR. SHAINIS: Ninety-point what?

25 MR. SCHAUBLE: -- 135(a)(5). In 470.512 800 Mhz

1 band requires an application to -- whenever the number of
2 mobiles you actually have operating is below the number
3 required for exclusivity, that you file an application to
4 reduce your mobile account.

5 MR. SHAINIS: Do you have the application Mr. Kay
6 referred to?

7 MR. SCHAUBLE: No.

8 MR. SHAINIS: Are you aware of it?

9 MR. SCHAUBLE: I think that that's the one
10 referenced in this exhibit, in the top line of Exhibit 57.

11 THE WITNESS: That's an "R" number that's on
12 there. It's not the one I'm talking about. You've been
13 sitting on it for over four years, guys, for four and a half
14 years since it was filed. It was filed in '94.

15 MR. SHAINIS: Presumably, we have a copy of it,
16 not Mr. Kellett and I personally; Mr. Kay does, which we
17 will be happy to provide to you, but presumably the
18 Commission, if it was filed, which I presume it was, you
19 know about it. Not you maybe not personally, but the Bureau
20 must know about it. And I'm not trying to take you by
21 surprise, but --

22 MR. KNOWLES-KELLETT: What we're saying here, this
23 listing should be listing it. For some reason it's missing
24 from the database, and you're work to correct this database.
25 The Judge has said that you can. But, you know, it's not --

1 MR. SHAINIS: I mean, presumably if something is
2 filed with the Commission, the Commission knows about it.
3 Now, I know from a practical standpoint there are many
4 things that are filed with the Commission that get lost.
5 It's like a black hole, but we will attempt to get you a
6 copy of that application as soon as possible so that you can
7 take it into consideration. I assume you want to make it as
8 an exhibit or we will.

9 JUDGE CHACHKIN: All right. Let's go on.

10 MR. SCHAUBLE: Okay.

11 BY MR. SCHAUBLE:

12 Q Mr. Kay, please direct your attention to WTB
13 Exhibit 60, WEC 934.

14 A Yes.

15 Q And do you see on page four the number of mobiles
16 authorized under that authorization is 71?

17 A Yes.

18 Q Let me ask you, for this authorization, are you
19 aware of any application that's been filed to reduce or
20 change your mobile count, which is pending?

21 A I don't know sitting here today. I have lots of
22 applications on file with the Commission that have been held
23 up for years. You ceased to process all my applications in
24 approximately April to May of 1994 and even took some back
25 well beyond 30 days after the grant date, so I have a whole

1 slew of stuff filed with the Commission, possibly 20, 30, 40
2 applications. I don't know if this is one of them or not.
3 I have not researched enough for this hearing, but one I did
4 certainly know about, because it reduced my mobile count on
5 a large quantity of channels.

6 Q Okay. Turn to Exhibit Number 61.

7 A Yes.

8 Q Do you see the reference there to Bell Cab
9 Company, Inc., listed as having 200 mobiles on that channel?

10 A Yes.

11 Q Now, turning back to the customer print screens,
12 and going to screen, page 3321 and 3322, and I'll ask the
13 witness if he is aware of the customer print screen for Bell
14 Cab Company because we did not see one in the document
15 production.

16 A These reports were given to you eight months
17 apart. The information for Bell Cab was indelibly entered
18 after these were printed out for you. If there isn't one in
19 there, then it was probably entered after. Any detail on
20 Bell Cab should be in the hard files that you were sent. If
21 it isn't there, it's certainly one of the new ones, but I
22 can't tell you offhand. They have been with us for quite a
23 while, and they still are.

24 Q Okay. Is it possible that Bell Cab became a
25 customer of yours in between March of '95 and November of

1 '95?

2 A Or there were in the process of getting set up at
3 the time this was printed, March. Sometimes the accounts
4 are not entered for a few days or a week or more, depending
5 on how backlogged my accounting staff is, so it's possible
6 it could have been as early as February, but it wasn't on
7 the database at the time we did the printout, which was
8 March 5th. I can't answer you exactly; I don't know.

9 Q Okay. Would it be correct that as a general
10 matter that if someone appears on the answer to
11 Interrogatory 4, but there is not customer print screen for
12 that customer, the most likely explanation is he became a
13 customer at some point between March '95 and November '95?

14 A You're asking me to speculate, and I don't know
15 that I want to do that because each individual case here
16 where you define something that may be different here, would
17 have its own story which would have to be researched, so I
18 don't want to speculate as for the cause of that, especially
19 if it turns out to be different than what you asked me.

20 MR. KELLER: I think also, I'd just like to
21 request, just for the purposes of clearness on the record,
22 we should probably refer to the print screens, Exhibit 347,
23 and the other data, Exhibit 19, because they both were in
24 different stages in response to Interrogatory 4, as I
25 understand it. And, therefore, I'm just concerned that a

1 response to Interrogatory 4 may be unclear in the record
2 which response we're talking about.

3 MR. SCHAUBLE: I don't believe the customer print
4 screens were in response to the interrogatory.

5 MR. KELLER: There was a further response.

6 MR. SCHAUBLE: The initial response to
7 Interrogatory 6 is in my documents, in the documents -- the
8 print screens so --

9 MR. KELLER: Correct. In March of '95 there was
10 an initial response to Interrogatory 4, which included,
11 among other things, the print screens. And then after some
12 objections and motions to compel, et cetera, in, I believe,
13 November of '95 was the supplemental response to -- which is
14 now in Exhibit 19. I just didn't want there to be
15 confusion.

16 BY MR. SCHAUBLE:

17 Q Mr. Kay, please direct your attention to WTB
18 Exhibit 63, Call Sign WIE 974.

19 A Yes.

20 Q And do you see on page four the authorization four
21 85 mobiles?

22 A Yes.

23 Q And now turn to WTB Exhibit 64. Is that your
24 response to Interrogatory 4 with respect to Call Sign WIE
25 974?

1 A That's what it says.

2 Q Okay. Now, Design Solution, which is listed as
3 zeros bases and two mobiles; do you see that?

4 A Yes.

5 Q Okay. Turn to WTB Exhibit 65, page two.

6 A Okay.

7 Q Is that the customer printout screen for Design
8 Solution?

9 A Yes. It appears to be.

10 Q Do you see that there is an end date there of
11 5/31/94?

12 A Yes.

13 Q And so would it be correct that at or
14 approximately around May 31, 1994, Design Solution was no
15 longer a customer of yours?

16 A That's correct.

17 Q Okay. And, similarly, on page four of Exhibit 65
18 would it be correct that Kaiser Foundation Hospitals is no
19 longer a customer of yours on or approximately around March
20 31, 1994?

21 A That's correct.

22 Q And, similarly, on the next page, Qualified
23 Circulation Corporation would not have been a customer of
24 yours on or approximately around September 30, 1994?

25 A That's correct.

1 Q So it would be correct that Design Solution's, two
2 mobiles; Kaiser Foundation Hospitals, 33 mobiles; and
3 Qualified Circulation mobiles would not have been loaded
4 onto the system either in March 1995 or November 1995?

5 A They would not have been operating. However, I
6 could tell you that the Kaiser Foundation, 33 units, were
7 unit and portables which were sold or transferred to our
8 company. It's entirely possible the other ones, these other
9 companies', were as well, though I can't tell you from
10 personal knowledge that they were or were not. The Kaiser
11 ones, I remember because there was a whole box full. We got
12 their radios. We turned around and used them as rentals and
13 demos as part of our system. They themselves were no longer
14 operating, but your interrogatory requested from January 1,
15 1991 to date all our customers who were on the channels.

16 That's what these reports are. In that regard
17 they are 100-percent correct. We also told you they
18 discontinued in the print screens. We complied with your
19 request on all four corners, sir.

20 Q Now, do you recall were there any other customers
21 who were operating under this call sign?

22 A Well, we would certainly use the radios that came
23 in from Kaiser as rentals along with the rest of our rental
24 flock. That's where we got a tremendous number of our
25 radios that you saw at my shop, was trade-ins from

1 customers. We turned around and recycled used equipment.
2 We would sell new radios to customers, they would go on
3 system, and if they canceled, we tried to get the radios
4 back, oftentimes did, and turned around and used those as a
5 rental or resold them as add-ons to other systems or as new
6 systems.

7 Q Okay. Let me ask you this, Mr. Kay.

8 A So there's been --

9 Q I'm sorry.

10 A There's been a continuous slew of radios used by
11 various customers, both as hard-paying for the repeater or
12 rental of the radios, which does not involve dealing for the
13 repeater. We could rent radios out to a customer for a
14 month, charge him \$15, \$20, whatever we could get from the
15 customer for renting the radios, and not charge him for the
16 repeater service; and, hence, we'd have users on my stations
17 that are not getting repeater bills, yet are bona fide use
18 of the systems, because we certainly had the radios from
19 other customers like Kaiser here to give them.

20 Q Okay. Now --

21 A If we had the radios, we counted them, sir.

22 Q Let me ask you this, Mr. Kay.

23 A Okay.

24 Q If you received a trade-in of radios back from a
25 customer who was ending business, --

1 A Okay.

2 Q -- you wouldn't necessarily reuse those radios on
3 the same frequency, would you?

4 A If it was a crystal radio, we certainly tried to.
5 If it was a programmable radio, it could be used on the same
6 frequency or on other frequencies. If we were just giving
7 out a rental and a frequency that's good to use, why would
8 we bother reprogramming and change them since they were
9 already on there, when they were already on something that
10 would be a readily useable system? It wouldn't make sense
11 not to, if that answers your question. Each case was
12 individual, sir.

13 MR. SCHAUBLE: Your Honor, could we go off the
14 record for a minute?

15 JUDGE CHACHKIN: Yes, we can.

16 (Discussion off the record at 2:17 p.m.)

17 BY MR. SCHAUBLE:

18 Q Mr. Kay, please direct your attention to WTB
19 Exhibit 56, WIF 759. Do you have that before you?

20 A Yes, I do.

21 Q Okay. And do you see on page four that this
22 authorization is for 47 mobiles?

23 A That's what it says.

24 Q Okay. And then turning to WTB Exhibit 67, is that
25 a copy of your further answer to Interrogatory 4 for WIS

1 759?

2 A I believe it is.

3 Q Okay. And do you see a total of 12 mobiles listed
4 on that report?

5 A That's correct.

6 Q Okay. And turning to Exhibit 68, page one, on
7 your Alfa Fox Towing is the end date 3/31/94?

8 A That's correct.

9 Q And the next page, on Mid City Taxi, is the end
10 date approximately 12/31/93?

11 A Correct.

12 Q Okay. Now, do you have reason to believe there
13 are additional customers operating on this frequency?

14 A You also have VIP services, which would be the
15 next one, --

16 Q Okay.

17 A -- which does not have an end date on there.

18 Q Okay. Other than Alfa Fox, Mid City, and VIP
19 Services.

20 A Again, sir, I know for a fact we took out Fox's
21 radios in trade because they switched up to an 800 Mhz
22 system subsequent to this. Those radios worked; I don't
23 believe they were reused. We also have -- as I said, you
24 know we're running rentals; we run a lot of them. We have
25 other dealers doing the same thing. We supplied you a whole

1 stack of the rentals and an inventory of our radios, part of
2 our exhibits. I'm sure you've looked at them.

3 Q Let me ask you to refer to what's been exchanged
4 as an exhibit list of information concerning rentals and
5 demos. Did you provide that to the Bureau in discovery in
6 this proceeding?

7 A They don't list individual frequencies, so we
8 couldn't charge them off to individual stations; and, hence,
9 because we could not charge them off to individual stations,
10 they could not be attributed to a particular station. Thus,
11 they did not fall within the four corners of your request.
12 If I supposedly had thought about it and I had other counsel
13 at the time, we probably would have done something with that
14 to show you that -- of course, we were already destined for
15 hearing at that time -- to describe to you better just how
16 my business works and how we use these frequencies and these
17 licenses.

18 Q Okay. And is it your testimony that you believe
19 the rentals, demonstrator units, and people from other
20 dealers who might be on this frequency would load this
21 frequency up to the 49 units contained on the license?

22 A I believe we had -- we have hundreds of radios
23 that we use, and the dealers that I work with also have
24 hundreds of radios between them. If you take an aggregate
25 number of the units that we have, I believe they adequately

1 fill between our paying customers, hard-paying customers,
2 the number of radios that we possess directly ourselves,
3 those that are associated dealers that use them in
4 accordance with our systems, we will reach sufficient
5 quantity of radios to cover the aggregate of units that are
6 licensed to us.

7 Did I go out and count, Don has 15 radios on this
8 channel and five on the next one? The honest answer is, no,
9 I didn't. But did we, as an aggregate across all my
10 licenses and the radios in my customers' possession using
11 them, used by myself as rentals, demos, loaners, donations,
12 which were demonstrated to you, and those used by my pals in
13 the radio industry that also maintain a flock of these
14 radios, I believe we have an adequate quantity, if not more
15 than enough radios, as an aggregate, to cover the total
16 loading of my licenses, as would be required by the rules.

17 Does that answer your question?

18 Q Okay. Let me clarify and ask a couple of further
19 questions. Let me ask you this, Mr. Kay. You've had a
20 chance to review the Bureau's exhibits concerning loading.
21 Correct?

22 A to be honest with you, no, I haven't sat down and
23 looked through them all. I at best leafed through them.

24 Q Okay. Is it correct that in many cases your
25 response -- the records you provided in 1985, either as

1 customer print screens or as a further answer to
2 Interrogatory 4, the loading reports produced in November
3 1995, showed with many calls signs that the number of
4 mobiles that were on those stations were fewer than the
5 number of mobiles authorized under those authorizations.

6 A I'm not 100-percent sure I'm following you. If
7 what you're trying to ask me is, did the answers to
8 Interrogatory Number 4, which the hard-copy mobiles shown
9 there are the hard-paying customers that I have, have
10 notably less number of mobiles than for which I'm licensed,
11 you're correct. That's why we put the explanation on top
12 of my answers to Interrogatory Number 4, to try to explain
13 to you right off the bat why there would exist a significant
14 and noticeable variance between my licensed loading and that
15 for which I was hard billing, because that's the way radio
16 companies work.

17 It's much like a freeway built for a certain
18 capacity; it's not going to be running at full capacity all
19 the time, and it's going to run at a different number of
20 loads. Do we have the total number of units? It's like a
21 taxi company may have 200 cabs, but do they ever have all
22 200 cabs out at the same time? Try Sunday night at 2 a.m.
23 and see how many cabs they've got out. They might have five
24 out.

25 It works the same way with the radio business,

1 sir, and that's what we tried to explain to you, though we
2 did not go into tremendous detail, when we answered
3 Interrogatory Number 4. It's the nature of this business,
4 sir.

5 Q Okay. Is it correct, Mr. Kay, that you do not
6 have records from which you can determine that a certain
7 rental or demo unit for another dealer was operating on a
8 specific frequency or call sign?

9 A That's correct. We gave both our rental flock --
10 let me try this this way. We gave our subdealers and also
11 my own service shop, Buddy Corporation, Southland
12 Communications, codes to access my repeaters. We
13 continuously leave these on. We have what we call test
14 codes and demo codes and rental codes turned on, activated
15 on my repeaters, where my own company, Southland,
16 technicians would use any one of those any time they want.
17 The referring dealers that we use can also use them.

18 They have also been given them, so that literally
19 they can fire up and use my system at their choice, and they
20 do. Those on the trunk system are metered, though not
21 billed as my paying customers are, and we oftentimes see
22 usage by these dealers as part of their normal, day-to-day
23 operations in demo'ing rentals -- their use of the radios,
24 which is basically identical to my own shop, so that any of
25 these people could use any of them at any time because the

1 codes were left on. Much like a cellular company will give
2 its dealers a group of telephone numbers to use for their
3 purposes and not bill them, we do the same thing with two-
4 way radios that dispatch traffic.

5 Q Mr. Kay, please direct your attention to WTB
6 Exhibit 69, Call Sign WIH 315.

7 A Yes.

8 Q And turning to page four, do you see the number of
9 mobiles authorized as 90?

10 A That's correct.

11 Q And turning to Exhibit Number 70, do you recognize
12 that as a portion of your response to the further answer to
13 Interrogatory Number 4 relating to Call Sign WIH 315?

14 A Yes.

15 Q And do you see that you list a total of 20 mobiles
16 --

17 A That's correct.

18 Q -- under that call sign?

19 A I agree with you completely. This is one of the
20 frequencies that was incorporated in that large license
21 application that was placed in 1994 to consolidate, I think
22 it was 19 or 21 channels of UHF, Subpart L spectrum, to
23 reduce their mobiles by nearly 2,000 mobiles and combine
24 them into a UHF trunk system.

25 Preparation had been under way to do that by

1 moving various customers from channel to channel and clear
2 the way to being UHF trunk operation in accordance with that
3 application that had been worked on for quite some time
4 previous to that. It also incorporated moving our customers
5 around to accommodate doing that. That's an application you
6 have now sat on for and a half years.

7 Yes. That's the only customers we had there at
8 that time because we shift our customers around as needed,
9 channel to channel, configuration to configuration, as we
10 need to manage our frequencies to the best interest of both
11 my customers and my company.

12 Q And it's correct that this answer would have
13 listed any customer who had been active between -- any
14 paying customer who would have been active between September
15 '93 and November '95.

16 A That's correct. We also ran our rentals and demos
17 on these channels, too, in the meantime, as we were
18 proceeding to configure our systems over to switch to the
19 mode that was applied for in '94. It was actually somewhat
20 delayed by the earthquake until we finally got it in, but
21 our preparations for that began back in '93.

22 Q Mr. Kay, please turn to WTB Exhibit 72.

23 A Yes.

24 Q Do you see on page four -- six "number of mobiles
25 authorized, 72"?

1 A Yes, I do.

2 Q Okay. Turn to WTB Exhibit 75.

3 A Okay.

4 Q Do you recognize that as the portion of your
5 further response to Interrogatory Number 4 relating to WIH
6 339?

7 A That looks correct.

8 Q And do you see a total number of 19 mobiles listed
9 under that call sign?

10 A That's correct.

11 Q Mr. Kay, do you have Exhibit 19 in front of you?

12 A I can. Okay.

13 Q And turn to page 83 of that, pages 83, 84, and 85
14 of Exhibit 19.

15 A All right.

16 Q And do those portions that further answer
17 Interrogatory 4 also relate to WIH 339?

18 A Which page numbers? It starts on 82, it appears.

19 Q Okay, 82 through 85 of Exhibit 19.

20 A Those are our hard-paying customers. That's
21 correct.

22 Q Okay.

23 A That were on there at that time.

24 Q And "that time" being the time between, again,
25 just so the record is clear, between September of '93 and

1 November '95. Correct?

2 A In their current or last configuration, though I
3 could have had other customers on that changed prior to
4 this. If they just canceled, they would remain as they
5 were. If they changed configuration or changed frequency,
6 then that would not be reflected.

7 Q Okay. Would it be correct on these four pages
8 that you list a total of 23 mobiles under this call sign?

9 A Whatever it sums to.

10 Q Okay.

11 A I believe subsequent to this report I put another
12 cab on there. I believe Bell is now incorporated as part of
13 their system, so we added another frequency shortly after
14 this or whatever, used it for them.

15 Q Okay. Do you recall filing any application to
16 modify this station after January 24, '94?

17 A I'm going to give you the same answer I gave
18 before: I don't know. I have a lot of applications on
19 file, and I don't know which they were because I didn't make
20 a list of them, but I must have 20 or 30 applications hung
21 up with you guys that you've held for years. So I chained
22 my car down in a zone that will turn into no parking. They
23 are giving me a ticket for it.

24 Q Mr. Kay, please direct your attention to WTB
25 Exhibit Number 77. Do you see the reference there to WIH

1 868?

2 A Yes, I do.

3 Q And on page four do you see the number of mobiles
4 authorized under this authorization is 58?

5 A That's correct.

6 Q Okay. Now, turning to WTB Exhibit 78, first of
7 all, do you see the statement, there is a typed zero and a
8 handwritten notation and 26 entered there? Is that your
9 handwriting?

10 A Yes. And I can tell you Stay Green is running
11 well more than 26 radios and has been for a while.

12 Q Okay.

13 A We found out after this he bought a whole slew of
14 radios from somebody else, if not 50, maybe even 60 or 70
15 radios. We haven't been able to get a count of it.

16 Q I'm sorry, Mr. Kay. I just didn't hear the last
17 part of your answer.

18 A I said we haven't been able to get an accurate
19 count out of them, and it's running well more than 26
20 radios, and it possibly was at that time, but that's what we
21 had on our records.

22 Q Okay.

23 A Customers do go add radios without telling us, oh,
24 yes.

25 Q And is it a fact that a zero was placed there in a

1 function of the way your computer system operated?

2 A Yes, which I explained to you before, because it
3 relates to the number of lines on the customer printout
4 sheet. For some reason there was a zero there, so I
5 corrected it to what our paper record said because I knew
6 zero wasn't right.

7 Q Mr. Kay, please turn to WTB Exhibit Number 81,
8 specifically page one.

9 A Yes.

10 Q Do you have the page before that's four call
11 signs, WIJ 872, WIK 823, WIJ 635, and WIK 261?

12 A That's correct.

13 Q Okay. And do you see there is a notation on the
14 report saying "500.000014 Sierra"?

15 A Correct.

16 Q Now, these stations do not actually operate
17 precisely on the frequency, 500.0000 Mhz. Correct?

18 A That's correct.

19 Q And, in fact, this is a notation that these
20 customers operate as part of an LTR trunk route from Sierra
21 on the 470 to 512 Mhz band.

22 A They operate on a Spillman-style, quasi-trunk
23 system on a 500 Mhz band, the primary station location is
24 licensed to Sierra Peak. The actual physical facility that
25 the Spillman system is on is on a temporary location, and

1 it's not on Sierra.

2 Q Okay. For the record, would you please explain
3 your reference to "Spillman system"?

4 A There is a gentleman whose name is Jack Spillman,
5 who, in 1993, apparently wrote a letter to the Federal
6 Communications Commission Rules Branch asking for
7 clarification on the use of the LTR format on shared
8 channels, as to whether or not it could be use and the
9 protection criteria to be utilized. And he received a
10 letter from Ross Alan at the Commission that said that his
11 proposed method of operation was legal for conventional
12 stations to utilize LTR format, provided certain protection
13 criteria were met.

14 Well, these stations here used the LTR format on a
15 conventional license, and they meet the requisite protection
16 criteria as spelled out by Spillman.

17 Q Would it be correct that this sort of service
18 would commonly be marketed as a trunk service?

19 A Yes, to the customer the difference between a full
20 trunk and the Spillman trunk or quasi-trunk, however you
21 want to call it, the Spillman conventional operation, would
22 be entirely or, by and large, transparent to an end user.
23 In other words, from their radio they would be very hard put
24 to tell the difference between an LTR system licensed as a
25 trunk and declared a trunk, officially declared a trunk, or

1 a system of conventional stations operating under the
2 Spillman fashion. A technician would be hard put to tell
3 the difference; an end user, almost impossible.

4 Q Okay.

5 A So, yes, we market them as trunked.

6 Q And it's correct that each of these licenses are
7 for conventional stations. Correct?

8 A That's correct.

9 Q And --

10 A I think it's the trunking issue we talked about
11 that was already settled.

12 Q I'm just trying to get -- here for the record.

13 A Okay.

14 Q Now, do you recall when in this proceeding you
15 first informed the Commission that these four stations were
16 part of an LTR trunk group operating in the Spillman
17 fashion, a quasi-trunking fashion?

18 A You never asked. I believe I told you in
19 deposition because you asked why all the call signs were on
20 one page, and I told you because all the customers use all
21 four call signs. That's when you asked why that was so, and
22 I told you. You never asked me.

23 Q Now, turning to page two of Exhibit 81, pages two
24 and three, --

25 A Okay.

1 Q -- do you see there is a separate listing for WIK
2 635?

3 A Correct.

4 Q And would it be correct that these are customers
5 that do not operate as part of the LTR trunk group?

6 A That's correct. They operate under the same call
7 sign but a physically different area of a different repeater
8 station of that same call sign that they do not bump heads
9 with the Spillman system.

10 JUDGE CHACHKIN: Let's take a five or ten-minute
11 recess.

12 (Whereupon, at 2:50 p.m., a brief recess was
13 taken.)

14 MR. SHAINIS: Your Honor, before Mr. Schauble
15 starts, there is a preliminary matter I'd just like to
16 direct your attention. Mr. Kay advised me during the break,
17 he is not feeling well, so he doesn't know how much longer
18 he can go. I think -- I just wanted to alert you to that
19 fact, and it may be fine, but --

20 JUDGE CHACHKIN: We're not going to go more than
21 an hour, at the most.

22 THE WITNESS: I picked up a cold on my way here,
23 and my voice has been slowly going. I'll keep at it as long
24 as a I can, though.

25 JUDGE CHACHKIN: Okay. Just try to keep your

1 answers briefer, and that might help your voice. Okay.

2 Let's go, Mr. Schauble.

3 MR. SCHAUBLE: Thank you, Your Honor.

4 BY MR. SCHAUBLE:

5 Q Mr. Kay, please turn to WTB Exhibit 80, and the
6 first authorization there is WIH 872. Do you see that?

7 A Yes.

8 Q And on page four do you see the number of mobiles
9 authorized under that authorization is 180?

10 A That's correct.

11 Q And turning to --

12 A This is one of the ones that's under
13 "modification" to reduce it to 90 since 94.

14 Q Okay. Turning next to page eight, WIK 823,
15 turning to page 11 of the exhibit, do you see 72 mobiles are
16 authorized under that call sign?

17 A I believe this may be on the same package, yes, it
18 is.

19 Q Okay. Do you believe you filed an application to
20 reduce the number of mobiles under this call sign?

21 A I can't tell you for certain the call sign, but
22 what happened is we would combine one or more call signs
23 together, so what call signs the whole package is referenced
24 under, I don't know right now.

25 Q Okay.

1 A But we will take, like, the stations we had at
2 Mount Lukens and the stations we have at Sierra, which in
3 the past would have two separate call signs, we would
4 combine them into one call sign under one and reduce the
5 number of mobiles, and many of the repeaters that are
6 presently at Sierra Peak and our main licensed to Sierra
7 Peak were being eliminated in that package.

8 So a huge swath of the Sierra Peak repeaters that
9 you've been commenting on here today are proposed to go away
10 for 1994, but we had to leave them there, even though our
11 plans for our system do not call for them to remain. So
12 there's basically, how shall I say, lame ducks sitting down
13 there?

14 Q Next, on page 12, please turn to WIJ 635. Is it
15 correct that the number of mobiles authorized under that
16 authorization is 180?

17 A That's correct. This was granted for 4/19/94.
18 The application to reduce it to 90 would have been filed
19 within weeks of this, long before the construction period
20 this license came about.

21 Q Okay.

22 A This is another one of the for certain. I believe
23 all of the Spillman channels, formatted channels, are part
24 of that application because that was the whole purpose, was
25 to trunk.

1 Q Okay. Now, by all the Spillman-formatted
2 channels, do you mean at all sites or just at Sierra?

3 A I'm sorry. There is three separate groups of
4 Spillman trunk-to-channels. Two of the three groups are
5 involved in the application.

6 Q And this is one of the two groups that's involved
7 with the application.

8 A Yes, it is.

9 Q And, finally, with respect to on page 18, do you
10 see WIK 261?

11 A Yes.

12 Q Okay. And on page 21 do you see the number of
13 mobiles authorized is 180?

14 A Yeah, another one of the Spillman, another one of
15 that application group.

16 Q Okay. Now, in that application did you propose to
17 reduce the number of mobiles from 180 to 90 on each call
18 sign, or was there a consolidation of --

19 A Going by recollection, the application takes a
20 group call signs, which I believe is somewhere in the area
21 of 30 to 40 call signs, reduces them to a single call sign,
22 combines all the frequencies onto one set of applications,
23 proposes a waiver for trunking to trunk across all these
24 channels, and reduces the total amount of loading by a
25 factor of around two, so that there would ultimately be -- I

1 don't remember exactly -- the application is somewhere
2 between 18 to 22 channels involved at 90 mobiles per channel
3 as compared to 180.

4 So those licenses that are carrying 180 mobiles
5 such as this one, which was granted in 1994, would have
6 promptly before it ever reached its construction date eight
7 months after this been reduced to 90 and incorporated into a
8 trunk system, which with the waiver for trunk would be a
9 question of whether that granted application would have been
10 given eight months or one year to load because trunks are
11 granted one year for full construction, and the question is
12 what would be the loading benchmarks if benchmarks would
13 apply to a waived trunk system on UHF. That's a question
14 I don't think we ever even got to because they didn't grant
15 it.

16 Q Okay. Turning to -- Mr. Kay, turn to page one of
17 Exhibit 81, and my question is, on the Spillman-formatted
18 trunk systems --

19 A Yes.

20 Q -- would you have had nonpaying customers or demo
21 or rental customers?

22 A Absolutely, absolutely. We wanted our dealers to
23 sell onto this. Absolutely we gave demo codes. I've still
24 got batches and batches of these radios at my shop. You
25 guys even saw a pile of them; I showed them to you.

1 Q Mr. Kay, please turn your attention to WTB Exhibit
2 83.

3 A Yes.

4 Q WIH 886; do you see that?

5 A Yes, I do.

6 Q And do you see that on the first two lines there
7 appear to be references to applications which are not
8 renewals for which there are no grant date?

9 A These are your forms. I'm not familiar with how
10 you laid them out. They are not the usual ones that I deal
11 with that are available through ISI, the data contractors.
12 You're asking me to make a representation regarding a
13 document with which I'm unfamiliar. You would have to tell
14 me that's the case. I see a file number up in the corner of
15 415319, but I don't know its status, whether it was
16 dismissed or whether it's on hold. You would know far
17 better than I because you have it.

18 Q Let me ask, do you recall filing an application
19 with respect to this call sign?

20 A Do I recall off the top of my head? No, but I can
21 tell you, you've got a whole batch of my applications that
22 you've been holding for a long time, but I don't know what
23 each and every one of them is.

24 Q Okay.

25 A This appears it was filed in July of 1994. I

1 don't think four-something-odd years later I'm going to
2 remember the application.

3 Q Just for the record, Mr. Kay, the "rec. date,"
4 which is received date, is 5/9/94.

5 A I saw an "ATC date, 7/21" up here. Oh, I see.
6 Okay. "Received date, 5/9/94." Okay. They're your forms,
7 guys.

8 Q Okay. Turning to page four of the exhibit, --

9 A Okay.

10 Q -- do you see the number of mobiles currently
11 authorized is 66?

12 A Yes.

13 Q Okay. Turning to WTB Exhibit 86, --

14 A Okay.

15 Q -- do you see -- it says here, "further response
16 to Interrogatory 4 with respect to WIH 886."

17 A Right.

18 Q Do you see the listing of Bell Cab Company for 200
19 mobiles there? Correct?

20 A Yeah.

21 Q I believe you testified previously concerning Bell
22 Cab.

23 A Correct. They've got a lot of cabs. There's also
24 Sierra Peak on this channel, too. You were talking about
25 Sierra Peak heavily earlier in this. Well, a 508.287 -- is

1 one on Sierra Peak, too. Bell could have access to it,
2 operates within its radius, too, so it depends on how you
3 want to count their 200 mobiles. If you want to count them
4 all here on WIH 886 on the Sierra Peak station, Bell has a
5 large system with a lot of cabs and with multiple
6 frequencies.

7 (Discussion off the record.)

8 BY MR. SCHAUBLE:

9 Q Mr. Kay, turn your attention back to Exhibit 83, -
10 -

11 A Okay.

12 Q -- page three.

13 MR. KELLER: Where was that?

14 MR. SCHAUBLE: Exhibit 83, page three.

15 THE WITNESS: Okay.

16 BY MR. SCHAUBLE:

17 Q Do you see the authorized base locations are
18 Lukens and Oat?

19 A Right.

20 Q And is the operation under Sierra Peak under the
21 frequency under another call sign?

22 A That's what I just said a minute ago.

23 Q Okay. Please turn to WTB Exhibit 88, WIH 496. Do
24 you see that?

25 A Yes, I do.

1 Q Okay. On page four do you see "authorized for 66
2 mobiles?"

3 A Yeah. It's another one of the applications that's
4 part of that big group. It's one of the frequencies.

5 Q Okay. Turn to Exhibit 89.

6 A Okay.

7 Q And is it correct that you refer to a total --
8 first of all, do you recognize this as your further response
9 to Interrogatory 4 with respect to WIH 946?

10 A Yes, I do.

11 Q And is it correct that you reported a total of 38
12 mobiles under that --

13 A That are active, hard-paying customers on there.
14 Well, they aren't all hard paying. Chino Hills Patrol is
15 our friends, the Drays. They haven't seen fit to pay me for
16 a few years, though I still am allowing them to use service
17 until my lawyers get through with it.

18 Q Mr. Kay, turn your attention to WTB Exhibit Number
19 91, --

20 A Yeah.

21 Q -- WII 621.

22 A Yeah.

23 Q Mr. Kay, do you see on the first entry that there
24 is an application with a received date, 7/5/94?

25 A I see the received date, yeah.

1 Q Okay. And do you recall the purpose of that?

2 Under "Purpose" do you see "M"?

3 A An "M" would mean "modification."

4 Q Okay.

5 A If I'm not mistaken, I proposed to add a base
6 station at Lukens on this channel, or it would be more
7 economically feasible to me.

8 Q Okay. Turning to page four, --

9 A Yeah.

10 Q -- do you see the number of mobiles authorized
11 under this authorization is 45?

12 A Yes.

13 Q Now, turn to WTB Exhibit 92.

14 A All right.

15 Q Do you recognize this as your further response to
16 Interrogatory 4 with respect to WII 621?

17 A Well, you have two groups of users on there, and
18 after seeing the application, I believe I may have modified
19 or reduced the number of mobiles on this license. I'd have
20 to see what the modification is. We're talking about a
21 modification here. I think we should see it if you're going
22 to ask what we were doing it. If I was reducing loading,
23 well, I think I'd have a little fat here, fellows.

24 Q On page one of the exhibit --

25 A Yes.

1 Q -- under Reliable Paving, --

2 A Yes.

3 Q -- is it correct that you intended to list 10
4 mobiles for Reliable Paving?

5 A I believe so. I can't say for certain. I believe
6 so. I think you may have caught an error. He can't be at
7 Lukens. We don't have that hardware there. I think he is
8 on the channel, but I think he is at Mount Lukens. He
9 should have been on the second page.

10 Q Okay. So what you're saying is reliable should be
11 listed on page two there.

12 A Right. I don't think I have 508.9625 at Lukens.
13 You'll have to check your inspection reports. I don't think
14 it's there because it didn't get authorized. I think this
15 guy was supposed to be at page two. That's the only place
16 he could be. That's why I gave you the hard files, to tell
17 you where these guys are. I think he should be on page two.

18 Q Turn now to WTB Exhibit 94.

19 A Okay.

20 Q WII 697.

21 A Okay.

22 Q Turning to page four, do you see the number of
23 mobiles authorized under this authorization is 84?

24 A This is one of the ones we were reducing part of
25 the package, too. It's on the same frequencies you asked

1 about a little bit ago, 471.1875.

2 JUDGE CHACHKIN: My question is, how do these
3 modification applications or ones for which he is reducing
4 the number of mobile units, how does that impact the loading
5 issue?

6 MR. KNOWLES-KELLETT: Because if he reduced to the
7 point where it's the number of mobiles he has, then that's
8 what 91-35(a) requires, so we wouldn't have a leg to stand
9 on -- 90 and he is showing, then we may still have a little
10 something; it's not much of a claim.

11 You know, Your Honor may find that the statement
12 that I have for rentals and demos is sufficient. We're
13 going to argue otherwise. But the fact that he reduced it
14 definitely shoots us in the leg.

15 JUDGE CHACHKIN: How do I know whether -- these
16 modification applications if they are not -- how did we take
17 official notifications of these applications if something --

18 MR. SHAINIS: Your Honor?

19 JUDGE CHACHKIN: Yes.

20 MR. SHAINIS: We do not have a copy of the
21 application here. I know there is a copy in California in
22 Mr. Kay's office. I spoke to Mr. Kay during the break.
23 Getting that application without him being there physically,
24 it may be difficult. What I was intending to do, and the
25 Bureau, I think, is going to attempt to find the application

1 also -- if the application can be obtained this week, then I
2 would assume -- and there's good faith on all parts here --
3 the Bureau, then, I would assume, make it as an exhibit or
4 we would make it as an exhibit, and I would use it in cross-
5 examination.

6 MR. KNOWLES-KELLETT: And in certain cases if it
7 means our issues go away, we'll stipulate they went away.

8 MR. SHAINIS: That's fine.

9 MR. KNOWLES-KELLETT: We only stuck them in here
10 if we thought they were an issue.

11 MR. SHAINIS: We understand that.

12 MR. KNOWLES-KELLETT: He had many cases where his
13 loading was sufficient, and we had no question about it.

14 JUDGE CHACHKIN: Because the issue does speak to
15 whether he acted wilfully in violation of the rules.

16 MR. KNOWLES-KELLETT: There is no violation, Your
17 Honor. There's no wilfully.

18 JUDGE CHACHKIN: That's right. All right. Okay.
19 Fine. Go ahead, Mr. Schauble.

20 MR. SCHAUBLE: Thank you, Your Honor.

21 BY MR. SCHAUBLE:

22 Q Turn to Exhibit 95, Mr. Kay.

23 A Yes.

24 Q Do you see there is a reference there to Airwave
25 Communications?

1 A Yes.

2 Q And that is the name under which Marc Sobel
3 conducts business.

4 A That's correct. We bill Marc Sobel. Marc Sobel
5 is billing his end-user customer, which is a security-patrol
6 company that I do not bill directly. There is a security-
7 patrol company operating there. I don't even know the name
8 offhand. They are Marc's customer and uses a number of
9 Marc's repeaters, and Marc wants to bill them in the
10 entirety, so I bill Marc, and Marc bills him not only for
11 the use of my system, but for his own. Marc resells my
12 service directly under his name.

13 Q Okay.

14 A He leases the capacity from me and then sells it
15 to his customer as well as along with his own capacity. Did
16 the answer your question?

17 Q Okay. Let me ask you, as a general matter, in
18 these reports if you have a situation where a dealer -- you
19 have this resale situation, would that show, either on the
20 customer print screens as a customer or in your further
21 answer to Interrogatory 4?

22 A If we're hard billing them in dollars, the answer
23 is yes. If we're not hard billing them in dollars, the
24 answer is no.

25 Q Okay. And by "hard billing," do you mean --

1 A We're sending them a bill.

2 Q Okay.

3 A They appear in here if we're sending them a bill.

4 Q Okay.

5 A If we're giving it to them gratis or in exchange
6 for something else, which there's occasions where I will
7 trade services for free in exchange for space rent, for
8 example. Dealers horse trade all the time. I'll horse
9 trade repeater-site space for repeater-site space and horse
10 trade repeater services for space and vice versa. We work
11 these deals all the time with each other, and if we're
12 giving away free repeater service, even if it's in exchange
13 for something else other than cash where we don't generate a
14 bill, it won't show here, but it certainly exists.

15 Q Okay.

16 A And we do that.

17 Q Mr. Kay, please turn to Exhibit 347, which is the
18 customer print records.

19 JUDGE CHACHKIN: What page?

20 MR. SCHAUBLE: Three-two-five-zero through 3254.

21 THE WITNESS: Yes.

22 BY MR. SCHAUBLE:

23 Q Okay. Do you see there is a series of customer
24 files for Airwave Communications?

25 A Yes.

1 Q Okay. And would it be correct that each -- now,
2 taking a look at 3250, it's correct that there is no site
3 information entered on that page. Correct?

4 A There is an entry down there at the bottom which
5 says "HP-RNT." That's a space rental.

6 Q Okay.

7 A And it's coded 10-99; "10" means it's Mount
8 Lukens. Mr. Sobel pays me for space on Mount Lukens, rent
9 for equipment that I do not manage. Several of Sobel's UHF
10 stations, I believe, are in there. They are paying me for
11 that.

12 Q Okay. So would it be correct that all of these
13 five pages represent various space rental arrangements?

14 A Well, no, that's not correct.

15 Q Okay.

16 A The top one here, page 3250, is for space rent at
17 10-99. The "10" means Mount Lukens, and "99" is a
18 miscellaneous code charge used for rentals. The "3251" is
19 space rent 11, meaning Oat Mountain, "99" meaning space
20 rental. Bates 3252 indicates a 100-trunk system usage on
21 Lukens, Oat, Castro, Santiago, and Rasnow, which started
22 back in '91.

23 At that time, I don't think we could put
24 additional site codes in because we only had, I think, five
25 lines then. Marc has more than this, but we could only put

1 five in. This is a record of his free usage of 800 Mhz.
2 There is no monthly bill there. Marc has carte blanche to
3 use my 800 trunk systems as he sees fit for himself or
4 rentals or demos. This is just a record of it that's in
5 there.

6 The next one is 3253, which is space rent, "SP-RNT
7 14," which is "Sierra Peak-99." That's where Marc pays me
8 rent for equipment he maintains down at Sierra Peak, UHF
9 stations that are licensed to him that he operates totally
10 on his own. I'm acting as a reselling landlord for him
11 there. Page 3254 is also a space rent, 16-99, which
12 indicates I'm reselling his space at John Stone Peak for \$50
13 a month. I don't see one in here that matches up with
14 another 40 units where I'm billing, which was on the other
15 page you have here.

16 Why it isn't here, I don't know. I don't know if
17 it was overlooked or it occurred after the gap between March
18 19th and November-something of '95. It could have occurred
19 in that gap or I may not be charging him for that security
20 company. I would have to look to see what my arrangement
21 is.

22 Q Okay.

23 A The answer is, I don't know. Does this explain
24 what you want to hear -- discussing the printouts?

25 BY MR. SCHAUBLE:

1 Q Mr. Kay, please turn to WTB Exhibit 97, WII 787,
2 and turn to page four.

3 A Okay.

4 Q And is it correct that the number of mobiles
5 authorized under this license is 78?

6 A Seventy-eight. I believe this one is also in that
7 large package for reduction in consolidation stations.

8 Q Okay. And --

9 A That application involved, I think, almost half of
10 my UHF, Subpart L, stations, guys.

11 Q Turn to WTB Exhibit 100.

12 A Okay.

13 Q And do you recognize that as your response to a
14 portion of the further response to Interrogatory Number 4
15 dealing with WII 787?

16 A Yes, it is.

17 Q Turn to WTB Exhibit 102.

18 A Okay.

19 Q And that is Call Sign WII 874.

20 A Yes, it is.

21 Q Okay. And on page four do you see the number of
22 mobiles authorized is 60?

23 A It's another one in that group, yes, it is.

24 Q Okay. And by saying "another one in the group," -

25 -

1 A -- the application.

2 Q -- another one in that application you referred to
3 previously.

4 A I could tell you this channel right now is in use
5 by over 150 mobile units that are operated by the Compton
6 Police Department for primary police operations in the city
7 of Compton. They wouldn't let us trunk it, so we ran it
8 into the police department.

9 Q Do you recall approximately when the police
10 department came on?

11 A Many months ago, maybe a year. I'd have to look
12 back. They've been on quite a while.

13 Q Okay. Turn to WTB Exhibit 105.

14 A Yes.

15 Q Do you recognize that as your portion of the
16 further response to Interrogatory 4 relating to WII 874?

17 A Yes. These were the customers that were on and we
18 moved off to accommodate the police department. We
19 relocated the customers.

20 Q Okay. So these are the customers who were on the
21 system between September of '93 and November of '95.
22 Correct?

23 A Correct. That's true for this whole book.

24 Q Of these here?

25 A Of the loading reports. Correct.

1 Q Okay. Turn to WTB Exhibit 107.

2 A Yes.

3 Q And the first entry on page one, do you see that a
4 modification application was filed -- was listed as received
5 on April 21, 1994?

6 A That's what it says. I believe that's also
7 reduced mobiles, and it's also a channel I have the police
8 department on.

9 Q Turn to page four of the exhibit.

10 A Uh-huh.

11 Q The number of mobiles authorized on the license is
12 79.

13 A Correct.

14 Q Turn to WTB Exhibit 108. Do you recognize this as
15 your response to -- portion of the further response to
16 Interrogatory Number 4 relating to WII 905?

17 A Yes.

18 Q Do you see the listing there, Metro Mobile Comm,
19 470 demos?

20 A Yes.

21 Q Okay. Is there a reason these particular demos
22 would show up in these reports?

23 A At one time I think they used this one particular
24 channel for some special purpose. We probably billed them
25 for it for a one-time shot. Other than that, they had

1 access to pretty much everything we had.

2 Q Okay.

3 A If you're asking, can I think of any particular
4 reason why they showed up here as compared to anywhere else,
5 no, and it also doesn't reflect any mobiles there either,
6 whereas they have a large quantity. I'd have to say it's
7 more of an erroneous listing than anything else that was
8 conducted over the computer.

9 Q Okay. Please turn to WTB Exhibit 110, WIJ 310.

10 A Yes.

11 Q And actually turn to Exhibit 111. Do you see two
12 call signs listed there, WIJ 310 and WIL 415?

13 A Right.

14 Q Could this be duplicate authorizations for
15 operating from the same frequency at the same site?

16 A I would believe so. We didn't operate Spillman
17 fashion on 470's, so I believe that's the case, though I
18 can't say 100 percent. I suspect it was. Well, looking at
19 the authorizations, I can't absolutely answer you that that
20 is the case, but I would suspect it is. I missed a couple
21 of those, as you found. I believe this is one I did catch.

22 Q Okay.

23 A I had to go through these and individually try to
24 match up frequencies and locations converted to call signs
25 in order to file your report because you wanted all these

1 reports by call sign, which is not the way my database was
2 ever set up. So it had to be done manually through 150 call
3 signs in all these reports. It was quite a task, so I would
4 guess that's what it is, and you spotted a couple where I
5 had missed them.

6 MR. SHAINIS: Okay. It seems, from my advantage
7 point, Mr. Kay's voice is virtually gone at this point. I
8 don't know how much more you have. Maybe this would be a
9 good time to adjourn.

10 JUDGE CHACHKIN: I think that's correct. Both
11 authorizations here have Lukens on them on that frequency.
12 That is what occurring -- piece of physical hardware.

13 JUDGE CHACHKIN: Do you think you can go on a
14 little longer?

15 MR. SCHAUBLE: Okay. It will save trouble
16 tomorrow morning going over this stuff. Now, you tell me if
17 you feel that you can't go on.

18 THE WITNESS: No. I'll try for the 20 minutes.

19 MR. SCHAUBLE: Okay.

20 BY MR. SCHAUBLE:

21 Q Mr. Kay, with respect to WIJ 310, you're
22 authorized for 11 mobiles, directing your attention to page
23 four of Exhibit 110. And with respect to WIL 415, you're
24 authorized to four mobiles under that authorization.

25 A I believe that's correct.

1 Q Okay.

2 A I guess we don't have a shortage of mobiles there.
3 I believe also there is a Sierra Peak on this channel, too,
4 if you wanted to look it up, 472.3375. I think there is a
5 Sierra Peak on that.

6 Q Okay.

7 A Whatever.

8 Q Mr. Kay, please direct your attention to WTB
9 Exhibit 113, WIJ 644.

10 A Okay.

11 Q And do you see on the first entry on page one a
12 reference to a modification application with a received date
13 of 6/18/96?

14 A Okay.

15 Q Do you recall the purpose of that modification?

16 A No, I don't. This is a frequency I know we put an
17 application in to reflect 90 mobiles by combining several
18 call signs together. This is also the same one you were
19 questioning about being out on South Mountain, the same
20 frequency; 471.9125 had several calls signs for it, and I
21 believe there is an application pending to combine all the
22 call signs and/or delete some of the call signs or cancel
23 some of them. The net result would leave one license with
24 90 mobiles encompassing the entire operation on the channel.
25 I believe you have that on file.

1 Q Now, turning to page four of Exhibit 113, --

2 A Okay.

3 Q -- do you see the number of mobiles authorized
4 under this license is 84?

5 A Yes.

6 Q Flipping to WTB Exhibit 116, --

7 A Okay.

8 Q -- do you recognize that as your portion of the
9 response to the further answer to Interrogatory 4 relating
10 to WIJ 644?

11 A It looks like it.

12 Q Mr. Kay, please turn to WTB Exhibit 118, and that
13 would be WIJ 700. Do you see on page four of the exhibit
14 that the number of mobiles authorized under that license is
15 67?

16 A Yes.

17 Q And do you recall if there is any sort of
18 modification? This frequency at this location was part of
19 the --

20 A I don't think it's part of the big package, but
21 there may be one on file.

22 Q Okay.

23 A I remember some of them. I don't remember all of
24 the frequencies that require that application, and the ones
25 where I'm modifying individual licenses, I remember a few of

1 them, but I don't remember them all.

2 Q Okay.

3 A You've already brought up one here I didn't
4 remember offhand until you showed it to me, actually a
5 couple.

6 Q Turn to Exhibit 119.

7 A Okay.

8 Q Do you recognize that as a portion of your further
9 answer to Interrogatory 4 relating to WIJ 700?

10 A Yeah. That looks right.

11 Q Now, do you see the reference there to the name
12 "Community Taxi Cab Company"?

13 A Yes.

14 Q Turn to page one of Exhibit 120. My question is,
15 is it correct that Community Taxi Cab Company is normal
16 known as "East Side Cab"?

17 A You've got me. I would suspect they are probably
18 one and the same. They may have changed hands. You've got
19 me. That would be something my staff would handle. I
20 suspect -- these taxi cabs change their names every day of
21 the week, it seems. Certain customers, you've got
22 experience, they do these things. They change names. They
23 move locations. They will sell out and are bought out. So
24 the change between Community and East Side doesn't surprise
25 me. I suspect it's the same, but without reviewing the

1 paper files that you were given or asking my staff, I
2 couldn't absolutely tell you.

3 Q Okay. Would you agree that both the November '95
4 loading report and the customer file indicate the operation
5 of 45 mobiles on 471.1625 at Lukens?

6 A The customer report also shows Sierra on there,
7 too.

8 Q Okay. I didn't mean to be exclusive there.

9 A I don't know if it was an error where they listed
10 45 for Lukens and 45 Sierra or if they are running 90. I
11 suspect it's 45, but without looking at -- we're billing
12 them \$300 a month. We could have cut them a package deal on
13 their running 90. I don't know. I'd have to look at the
14 paper file. I suspect it could be 90 split, or it could be
15 45 at one site. I'm not certain. That's why we gave you
16 the paper files, guys. It should have that in there on our
17 customer contract.

18 Q Mr. Kay, please turn to WTB Exhibit 121, WIJ 712.

19 A Yeah.

20 Q And on page 40 do you see the number of mobiles
21 authorized under this license is 77?

22 A Correct.

23 Q And turn to WTB Exhibit Number 122.

24 A Yeah.

25 Q And is that your response? Do you recognize that

1 as a portion your further answer to Interrogatory 4 relating
2 to WIJ 712?

3 A That's correct.

4 Q Turn now to WTB Exhibit 124, WIJ 893. On page
5 four do you see the number of mobiles authorized is 162?

6 A Correct.

7 Q Do you recall whether this station was part of the
8 application you referred to earlier to combine?

9 A I don't believe it is, though I think when you get
10 applications processed, we'd file to modify this one. It
11 still shows my old Roshida address as a control station.

12 Q And turn now to WTB Exhibit 125.

13 A Yes.

14 Q Do you recognize that as a portion your further
15 answer to Interrogatory 4 relating to WIJ 893?

16 A Yes.

17 Q Mr. Kay, please turn to WTB Exhibit 127, WIJ 992.

18 A All right.

19 Q And on page four, do you see the number of mobiles
20 authorized is 90?

21 A Yes.

22 Q And turning to WTB Exhibit 128, --

23 A Yes.

24 Q -- do you recognize that as a portion your further
25 answer to Interrogatory 4 relating to WIJ 992?

1 A Yes. It looks like it. One of the customers on
2 here, Artcraft, shows zero mobiles on page one; it doesn't
3 show any on page two. That's apparently an omission.
4 That's probably an error. They don't have zero mobile
5 customers.

6 Q Okay. Mr. Kay, please turn to WTB Exhibit Number
7 129, particularly page two.

8 A Right.

9 Q Do you recognize that as the customer print screen
10 for Artcraft Concrete?

11 A Right.

12 Q And Sites Number 1, 2, and 3 a listing for six
13 mobiles for that company?

14 A Correct.

15 Q And would that be their operation on the various
16 470-to-520 still unformatted trunk systems?

17 A Yes.

18 Q Okay.

19 A And there's the talk-arounds that they have
20 available to them.

21 Q And, specifically, under Number 7?

22 A Well, it could be a talk-around, or it could be a
23 conventional. It doesn't say for sure here. They are
24 associated with a repeater site. They could be additional
25 conventional with repeater and talk-around, or they could be

1 pure talk-around. The customer file, his screen does not
2 give me enough information to answer. That would be in the
3 hard-copy file whether it would be an actual frequency-
4 programming page. That would give that detail. Okay.

5 Q Turn to page five of Exhibit 129, which is the
6 customer print screen for Pat Miller.

7 A Yes.

8 Q Okay. Do you see under Site Number 1 there is the
9 code 1021 and one mobile listed?

10 A Yes.

11 Q And then under Number 6 there is also a code 1021
12 with the same frequency. Correct?

13 A Yes.

14 Q Is that an error in the record, or is there some
15 significance to this?

16 A I haven't got a clue. It looks like an error to
17 me. I don't enter these myself; my staff does. That
18 doesn't make sense why there would be a duplicate there.
19 One shows a mobile, and the other one doesn't. It doesn't
20 make sense. It also isn't harmful. It doesn't affect the
21 billing.

22 MR. SCHAUBLE: Your Honor, I note that the next
23 exhibit -- we're beginning to get into another LTR tree
24 group, which may take a little more time than other stations
25 to get into, so this may be an appropriate --

1 JUDGE CHACHKIN: Well, let me ask you this. How
2 much more time do you aspect you're going to have with Mr.
3 Kay on the records? We'll run it until 1 o'clock on
4 Thursday, so how much more time do you have?

5 MR. SCHAUBLE: Your Honor, if I can consult with -
6 -

7 JUDGE CHACHKIN: All right. We'll go off the
8 record.

9 (Discussion off the record.)

10 JUDGE CHACHKIN: You are excused.

11 (The witness was excused.)

12 THE WITNESS: Thank you, Your Honor.

13 JUDGE CHACHKIN: Back on the record. Go ahead.

14 MR. SCHAUBLE: Your Honor, we anticipate finishing
15 probably at some point late tomorrow afternoon.

16 JUDGE CHACHKIN: With Mr. Kay?

17 MR. SCHAUBLE: Yeah.

18 MR. KELLER: Entirely?

19 MR. KNOWLES-KELLETT: We may want to discuss
20 stipulations with you after --

21 JUDGE CHACHKIN: Are you going to have cross-
22 examination of Mr. Kay?

23 MR. KNOWLES-KELLETT: I'm sure we will.

24 MR. SHAINIS: Yes.

25 JUDGE CHACHKIN: Extensive? We'll go as far as --

1 MR. SHAINIS: I understand that. My inclination
2 is not to be overly extensive, but at the same time I have
3 to be clear. What I don't want to do, and really -- for
4 example, if the Bureau is willing to make some concessions
5 after they see the application, that will shorten the cross-
6 examination considerably. Even if they don't make any
7 concessions, I may be able to do it in a summary fashion so
8 I don't have to go through every exhibit that you've gone
9 through.

10 JUDGE CHACHKIN: Well, Mr. Kay has given some
11 extensive answers --

12 MR. SHAINIS: He certainly has given --

13 JUDGE CHACHKIN: -- explanations.

14 MR. SHAINIS: That's right, and all from memory, I
15 might add.

16 JUDGE CHACHKIN: Well, it seems to me that he's
17 pretty much covered the subject, but certainly you're
18 welcome to --

19 MR. SHAINIS: I understand.

20 JUDGE CHACHKIN: -- ask any further questions you
21 feel is necessary.

22 MR. SHAINIS: Okay.

23 JUDGE CHACHKIN: But the reason I brought this up
24 is obviously if we didn't finish Mr. Kay this week, then I'd
25 have serious doubt we'd be able to finish with five

1 witnesses next week in four days.

2 MR. KNOWLES-KELLETT: We discussed the possibility
3 it could be very simple for us to move all of the
4 Commission's engineer in. And I don't think -- it's nothing
5 very contentious that he is going to be talking about.

6 JUDGE CHACHKIN: Well, my only concern is I don't
7 want to bring anybody up here. If we're not going to finish
8 by December 30th so they have to come back on January 11.
9 So it's up to you to police it, but -- realistically you can
10 put on five witnesses next week.

11 MR. KNOWLES-KELLETT: We were delaying that
12 decision until later in the week.

13 JUDGE CHACHKIN: That's fine, but I just wanted to
14 -- notice --

15 MR. SCHAUBLE: We're trying to remain sensitive
16 to that, Your Honor.

17 JUDGE CHACHKIN: Yeah, because I would be very
18 reluctant to have to bring somebody back. So if you have to
19 shorten the list for next week, do so, starting January 11.
20 Yes.

21 MR. KELLER: As long as we're talking schedule --
22 I was going to wait to bring this up until another day this
23 week, but on January 11th I was wondering if I could request
24 that we adjourn at 3 o'clock. The reason is I teach a
25 course at the Communications Law Institute at Catholic U.

1 The first day of classes for this semester is January 11th.
2 My class is at 4 o'clock. I can skip a class now and again,
3 but they would frown if I missed the first day of the
4 semester.

5 JUDGE CHACHKIN: Do you have any objection?

6 MR. SCHAUBLE: It might be appropriate to jiggle
7 the schedule a little bit in that regard because --

8 MR. KNOWLES-KELLETT: We have two witnesses who
9 are flying in.

10 MR. SHAINIS: But they are both short witnesses,
11 as I recall.

12 MR. SCHAUBLE: Now, Barbara, we may be able to
13 stipulate -- and Kevin Hessman.

14 MR. KNOWLES-KELLETT: All three of them are short.

15 MR. SHAINIS: Girard -- there is going to be some
16 voir dire -- there is going to be some voir dire on Girard.

17 MR. KNOWLES-KELLETT: If you can put Barbara Usher
18 on last on that day, then I don't have to necessarily be
19 here.

20 JUDGE CHACHKIN: We'll make every effort to
21 accommodate you.

22 MR. KNOWLES-KELLETT: And also there is a
23 possibility, depending on who the witness is, that Mr.
24 Shainis --

25 JUDGE CHACHKIN: As I say, we'll make every

1 effort.

2 MR. KNOWLES-KELLETT: Sure.

3 MR. SCHAUBLE: Thank you, Your Honor.

4 JUDGE CHACKIN: All right. So we'll be in recess
5 until 9 a.m., and hopefully Mr. Kay can be well enough to be
6 here.

7 (Whereupon, at 4 p.m., the hearing was adjourned,
8 to be reconvened at 9 a.m. on Wednesday, December 23, 1998.)

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT 94-147
CASE TITLE: James A. Kay
HEARING DATE: December 22, 1998
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12/22/98
Sharon Bellamy
Sharon Bellamy
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 12/24/98
Theodore Fambro
Theodore Fambro
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 1/1/99
Joel Storer
Joel Storer
Official Proofreader
Heritage Reporting Corporation